

### **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated January 9, 2009 (hereinafter Office Action) have been considered. Claims 1-17, 19-35, 40-43, 45-48, and 50-57 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

**1. Claims 15, 17, 19 and 25 are objected to as being dependent upon a base claim, but would be allowable if rewritten in independent form.**

The conditional allowability of Claims 15, 17, 19 and 25 is acknowledged, and the Applicant thanks the Examiner for favorable consideration of these claims. These claims have not been rewritten in independent form because the Applicants believe that the present amendments place all of the pending claims in condition for allowance.

**2. Claims 1, 3-5, 9, 11, 13, 16, 20, 21, 23, 25, 26, 28, 29, 35, 36 and 38-50 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2004/0147270 by Petrovich (hereinafter "Petrovich").**

Applicants first note that the rejection of Claims 36, 38, 39, 44, and 49 are now moot due to the cancellation of these claims. Thus, without acquiescence of the rejection or reasons therefor, the Applicants reserve the right to file continuing applications involving the original subject matter of the application, including that subject matter associated with original Claims 36, 38, 39, 44, and 49.

The Applicants respectfully submit that Claims 1, 3-5, 9, 11, 13, 16, 20, 21, 23, 25, 26, 28, 29, 35, 40-43, 45-48, and 50 as previously presented are not anticipated by Petrovich. However, in order to facilitate prosecution of the application and in a *bona fide* attempt to advance the application to allowance, the Applicants present this response with amendment to clarify particular aspects of the claimed invention. These amendments make more clear what is believed to have been originally set forth in these claims, but now states so more specifically.

Independent Claims 1 and 35 are first considered. Claim 1, for example, now recites that at least one transponder is associated with a visual representation for a user of a device that identifies a user application to be invoked at the device upon machine-reading the associated at least one transponder to perform a function identified by the visual representation. Similar amendments have been made to independent Claim 35. These amendments are fully supported in the Application as filed (e.g., Specification at p. 12, lines 6-9; p. 16, lines 3-14) and no new matter has been added.

As stated in the Office Action, Petrovich describes a transaction terminal of a store having a readable dataform that can be read by a customer m-commerce device. (e.g., Petrovich at [0030] and [0034]). A customer, upon seeing a signboard with a “high level” description or offer, scans a dataform to identify interest or intent, and then may be provided with product information, offers, reminders to later purchase, or to purchase (e.g., Petrovich at [0080-0081] and [0085]). According to the Office Action, Petrovich teaches (for example) a visual representation for a user of a device that identifies at least one function to be performed by the device. The “at least one function” purportedly taught by Petrovich is the description at [0030] of transferring of data to a POA terminal where the customer and her m-commerce device are located for requesting additional information. (Office Action p. 3, lines 12-14)

Applicants note that Petrovich fails to expressly or inherently describe a visual representation that identifies to the user a particular function that the device itself performs, such as is recited in Claim 1. For example, in Petrovich, it would make no difference to the consumer if the mobile m-commerce device performs the data transfer/storage noted above, or if the m-commerce device were merely a passive, read-only device (e.g., an RFID tag) and the POA terminal performed all data transfers. In either event, the goal of Petrovich’s system is, e.g., to gather preference data, facilitate point of sale (e.g., Petrovich at [0039]-[0040]), and none of these require Petrovich’s consumer m-commerce device itself to perform a function that is visually communicated to the consumer via a POA terminal.

Nonetheless, Petrovich fails to anticipate Claim 1 as presently amended. The signboard in FIG. 13 of Petrovich only describes products and services (e.g., chips, soda,

catering, etc.) so that the consumer may perceive items for sale (Petrovich at [0080]). Petrovich fails to describe that the signboard expressly or inherently identifies a user application to be invoked at the device upon machine-reading the associated at least one transponder to perform a function identified by the visual representation. The depiction of products and services as in Petrovich fails to expressly or inherently identify a user application that performs a function, where both application and function are identified by the depiction. Claim 35 has been amended to include features similar or analogous to those in Claim 1. Accordingly, Claims 1 and 35 are allowable over Petrovich.

Next independent Claims 13, 20, 45, 48, and 50 are considered. Claim 13 has been amended to set forth that a visual representation for a user is associated with a transponders having information associated therewith. Each visual representation identifies a targeted recipient of at least one person-to-person, communication function to be performed by a device upon machine-reading the associated transponder. Claims 20, 45, 48, and 50 have been similarly amended. These amendments are fully supported in the Application as filed (e.g., Specification at p. 28 lines 12-14 and 29-30, and p. 29, lines 8-9, 20-22 and 27-29) and no new matter has been added.

As noted above, Petrovich describes a signboard with products or services for sale that includes dataforms allowing transferring of data to a POA terminal regarding the products and services. Accordingly, Petrovich fails to describe that the signboard expressly or inherently identifies a targeted recipient of a person-to-person communication function performed by a device that machine-reads a transponder as is recited in Claim 13. Claims 20, 45, 48, 50 have been amended to include features similar or analogous to those in Claim 13. Accordingly, Claims 13, 20, 45, 48, and 50 are allowable over Petrovich.

Dependent Claims 3-5, 9, 11, 16, 21, 23, 25, 26, 28, 29, 40-43, 46 and 47 also stand rejected under 35 U.S.C. §102(e) as being anticipated by Petrovich. While Applicants do not acquiesce with the particular rejections to these dependent claims, including any assertions concerning inherency or the taking of Official Notice, these rejections are now moot in view of the remarks made in connection with independent Claims 1, 13, 20, 35, and 45. These dependent claims include all of the limitations of the base claim and any

intervening claims, and recite additional features which further distinguish these claims from Petrovich. Therefore, dependent Claims 3-5, 9, 11, 16, 21, 23, 25, 26, 28, 29, 40-43, 46 and 47 are also in condition for allowance

**3. Claim 10 is rejected based on 35 U.S.C. §103(a) as being unpatentable over Petrovich in view of U.S. Publication No. 2002/0177408 by Forster et al. (hereinafter “Forster”). Claim 12 is rejected based on 35 U.S.C. §103(a) as being unpatentable over Petrovich in view of U.S. Publication No. 2003/0017804 by Heinrich et al. (hereinafter “Heinrich”). Claims 2, 6-8, 14, 24 and 27 rejected based on 35 U.S.C. §103(a) as being unpatentable over Petrovich in view of U.S. Patent No. 6,246,882 to Lachance (hereinafter “Lachance”). Claims 18 and 37 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Petrovich in view of U.S. Patent No. 6,912,398 to Domnitz (hereinafter “Domnitz”). Claims 30-33 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Petrovich in view of Heinrich and Lachance. Claim 34 is rejected based on 35 U.S.C. §103(a) as being unpatentable over Petrovich in view of Heinrich and Lachance as applied to claim 30, and further in view of Domnitz.**

Applicants first note that the rejection of Claims 18 and 37 are now moot due to the cancellation of these claims. Thus, without acquiescence of the rejection or reasons therefor, the Applicants reserve the right to file continuing applications involving the original subject matter of the application, including that subject matter associated with original Claims 18 and 37.

Regarding independent Claim 30, the combination of Petrovich, Heinrich, and Lachance was relied upon to teach or suggest all of the claim limitations, but the rejections did not detail the grounds for the rejection. In the rejection of Claim 12, Heinrich was relied upon to teach backscatter modulation (e.g., Office Action p. 5), and in the rejection of Claims 2, 6-8, 14, 24, and 27, Lachance was relied upon to teach the use of SMS messages in an RFID reading unit (e.g., Office Action p. 6). Claim 30 recites receiving data when within a backscatter transmission range of an RFID tag, but does not describe the use of

SMS. As a result, Applicants cannot positively determine on what basis Claim 30 is rendered obvious by the cited combination of Petrovich, Heinrich, and Lachance.

Nonetheless, Applicants submit that the rejections are now moot because of the amendment to Claim 30, which now recites providing one or more RFID tags each associated with media having a visual representation for a user identifying a user application to be invoked on a device upon machine-reading the respective RFID tag to perform a function identified by the visual representation. As noted above, Petrovich fails to suggest either a visual representation of a user application to be invoked, or the visual representation of any function to be performed by the invoked function, where such application and function are performed in response to reading Petrovich's dataforms associated with signboards.

As a result, the combination of Petrovich, Heinrich, and Lachance fail to teach or suggest all the features of Claim 30, and so this claim is allowable over the Petrovich/Heinrich/Lachance combination. Claims 31- 33 depend from Claim 30, and therefore are allowable for the same reason. "If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious." M.P.E.P. §2143.03; citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Claim 34 depends from Claim 30, and was rejected over the Petrovich/Heinrich/Lachance combination further in view of Domnitz. However, the rejections did not rely on Domnitz to cure the deficiencies Petrovich/Heinrich/Lachance as applied to Claims 30 and 33, therefore Claim 34 is allowable over the cited combination of references.

Each of the rejections of dependent Claims 2, 6-8, 10, 12, 14, 15, 17, 19, 22, 24, 27, and 37 relies on Petrovich to describe all the elements of independent Claims 1, 13, 20, and 35 from which each of these claims respectively depends. None of Forster, Heinrich, Lachance or Domnitz were relied upon to provide a remedy to the deficiencies of Petrovich as it pertains to independent Claims 1, 13, 20, and 35, nor do these additional references provide such a remedy. Accordingly, Claims 2, 6-8, 10, 12, 14, 15, 17-19, 22, 24, 27, and 37 are in condition for allowance.

Finally, Applicants note the addition of Claims 51-57. These newly added claims are fully supported in the application as filed (e.g., originally filed Claims 1-50) and no new matter has been added. Claim 53 is an independent apparatus claim describing, among other things, a visual representation for a user of the device that identifies a user application to be invoked at the device upon machine-reading the associated at least one transponder to perform a function identified by the visual representation. Thus, Claim 53 is allowable over the references cited in the rejections for similar reasons as described above regarding Claims 1 and 35. In accordance with *In re Fine*, Claims 51-52 and 54-57 are allowable over the references cited in the rejections at least because of these claims dependence from Claims 50, 45, and 53, respectively.

Authorization is given to charge Deposit Account No. 50-3581 (NOKV.013CIP) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

HOLLINGSWORTH & FUNK, LLC  
8009 34<sup>th</sup> Avenue South, Suite 125  
Minneapolis, MN 55425  
952.854.2700

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By: /William B. Ashley/

William B. Ashley  
Reg. No. 51,419